IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

No. 5:10-CR-192-H No. 5:12-CV-346-H

DONALD BARNARD NEAL, JR.,

Petitioner,
)

V.

V.

ORDER

UNITED STATES OF AMERICA,
Respondent.
)

This matter is before the court on petitioner's motion to vacate filed pursuant to 28 U.S.C. § 2255. The government has responded to the motion, seeking to have this court dismiss petitioner's claims. Petitioner has replied. This matter was referred to United States Magistrate Judge Kimberly A. Swank for memorandum and recommendation ("M&R"). Judge Swank Swank filed an M&R on February 26, 2015, recommending that petitioner's motion to vacate be dismissed. No objections have been filed by either party, and the time for doing so has expired. This matter is ripe for adjudication.

A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved.

Accordingly, the court hereby adopts the recommendation of the magistrate judge as its own; and, for the reasons stated therein, petitioner's motion to vacate is DENIED. The clerk is directed to close this case.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). A reasonable jurist would not find this court's dismissal of petitioner's § 2255 motion debatable. Therefore, a certificate of appealability is DENIED.

This $\frac{24}{100}$ day of June 2015.

Malcolm J. Howard

Senior United States District Judge

At Greenville, NC #26